TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 43.

EUTIMIO MONTOYA, SURVIVING PARTNER OF THE FIRM OF E. MONTOYA & SONS, APPELLANT,

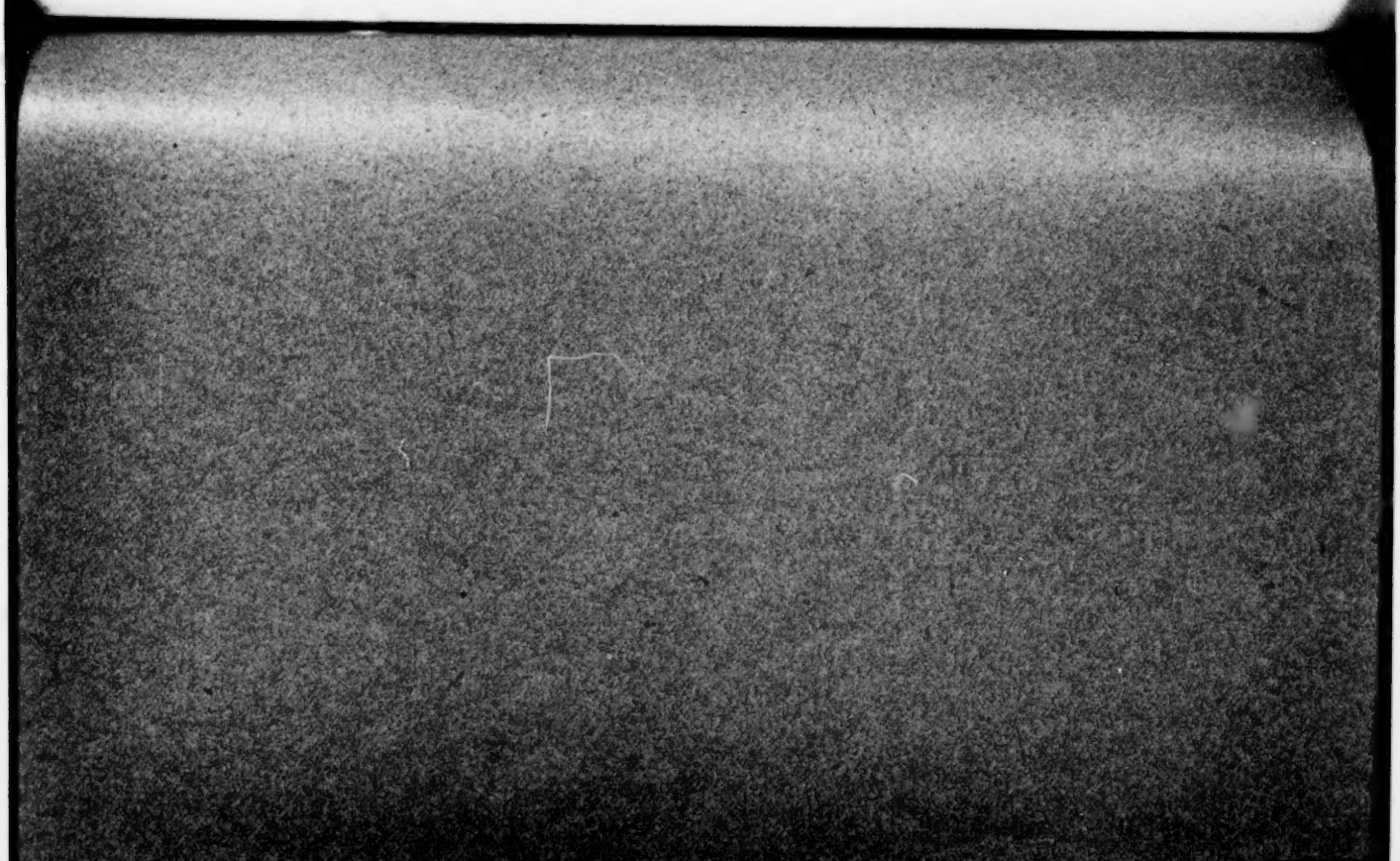
vs.

THE UNITED STATES AND THE MESCALERO APACHE INDIANS.

APPEAL FROM THE COURT OF CLAIMS.

FILED APRIL 29, 1899.

(17,387.)



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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., FEBRUARY 9, 1900.

1 In the Court of Claims.

EUTIMIO MONTOYA, Surviving Partner of the Firm of E. Montoya & Sons, v. THE UNITED STATES and THE MESCALERO Apache Indians.	No. 1588. Indian Depredation.

I.—*Petition. Filed May* 18, 1891.

To the honorable the Court of Claims:

The claimant, Eutimio Montoya, respectfully represents:

I. That he is a resident of San Antonio, Territory of New Mexico, and that he is the sole surviving partner of the firm of E. Montoya & Sons, consisting of E. Montoya, D. S. Montoya, and Eutimio Montoya.

II. That the following property belonging to E. Montoya & Sons, citizens of the United States, was taken by Indians of a tribe or nation then in amity with the United States, the date, place, and tribe being particularly stated below:

In Socorro county, New Mexico, on or about the 12th day of March, 1880, by Mescalero Apache Indians.

2	82 mares at $50	$4,100.00
	6 saddle horses at $60	360.00
2 mules at $60		120.00
29 yearling colts at $30		870.00
1 stallion		300 00
		$5,750.00

That said Indians were chargeable for said depredation by reason of a treaty between such tribe and the United States.

III. That a claim for said property, with evidence therein, was presented to the Commissioner of Indian Affairs, the items of said claim being as aforesaid.

That the following action was taken thereon: Disallowed and reported to Congress January 12, 1882; subsequently, on November 2, 1887, disallowed and reported to Congress January 5, 1888.

IV. That no other action than as aforesaid has been had on this claim in Congress or by any of the departments; that the claimant is the sole owner of this claim and the only person interested therein, and no assignment or transfer of this claim or of any part thereof or interest therein has been made; that the claimant is justly entitled to the amount herein claimed from the United States after allowing all just credits and offsets; that the claimant
3 is a citizen of the United States, and the claimant believes the facts as stated in this petition to be true.

And the claimant prays judgment upon the facts and the law in the sum of five thousand seven hundred and fifty dollars.

CHARLES & WM. B. KING,
Attorneys for Claimant.

TERRITORY OF NEW MEXICO, } ss:
County of Socorro, }

Eutimio Montoya, being duly sworn, deposes and says: I am the claimant in this case. I have read above petition, and the matters therein stated are true to the best of my knowledge and belief.

EUTIMIO MONTOYA.

Subscribed and sworn to before me this 28th day of April, 1891.

E. E. NOLD,
[SEAL.] *Notary Public.*

General Traverse.

Comes the Assistant Attorney General, on behalf of the United States and the defendant Indians, and, answering the petition of the claimant herein, denies each and every allegation therein contained, and asks judgment that the petition be dismissed.

JOHN G. THOMPSON,
Assistant Attorney General.

SMITH.

4 II.—*Findings of Fact, Conclusions of Law, and Opinion. Filed by the Court April* 12, 1897.

I.

At the time of the depredation hereinafter found Estanislao Montoya, Desiderio Montoya, and Eutimio Montoya were partners, doing business in Socorro county, N. Mex., under the name and style of E. Montoya & Sons, and were at the time, and long prior thereto, citizens of the United States, residing at San Antonio, in said county and Territory.

Thereafter, and long prior to the passage of the act of March 3, 1891 (26 Stat. L., 851), the said Estanislao and Desiderio Montoya died leaving the claimant herein surviving.

II.

On the 12th of March, 1880, the said firm of E. Montoya & Sons were the owners of the horses, mules, and other live stock described in the petition, then being herded and cared for by their agents at a place called Nogal, about 8 miles west of San Antonio, which were stolen by Indians in the manner set forth in Finding III. Said stock was at the time and place reasonably worth more than three thousand dollars ($3,000).

III.

Prior to 1876 the Chiricahua Apache Indians were living on what was known as the Chiricahua reservation, in southeastern Arizona,

and numbered from 300 to 500 warriors. They had been a terror to the community and surroundings, and had met with success in their engagements with the troops of the United States Army. (Report Commissioner Indian Affairs, 1876, p. 10.)

In 1876 an effort was made by the authorities having charge of Indian affairs to remove said Indians and locate them on the San Carlos reservation, where they could be more certainly restrained from hostile acts, but they resisted, and the result was that only 322 Indians, of whom 42 were men under Chief Taza, were removed thither. Of those remaining 140 went to the Warm Springs agency in New Mexico, and about 400, including Victoria, became hostile and roamed about in Old and New Mexico, committing depredations and killing citizens. (Report Secretary Interior, 1875, p. 711, and *ib.*, 1876, p. 4.)

Later these Indians were aided in their acts of hostility by Apache Indians from the Warm Springs agency (Report Secretary Interior, 1877, p. 416), and from this time until December, 1878, they continued their hostile acts.

In February, 1879, Victoria, a Chiricahua, who had previously rebelled against being placed on the San Carlos reservation, came near the military post of Ojo Caliente with 22 followers and agreed to surrender on condition that Nama's band, then at Mescalero, be allowed to join him, but only a few of that band surrendered, and in April following Victoria, with his followers, escaped and went to the San Mateo mountains. (Report Secretary Interior, 1879, p. 100.)

The military forces pursued him into Arizona, where he recruited his forces from the members of his tribe then being held as prisoners of war at the San Carlos reservation, and he subsequently escaped into Old Mexico. (Record of Engagements with Hostile Indians, by General Sheridan, p. 84.)

On the 30th June following, Victoria, with 13 men, came into the Mescalero reservation, where there were at the time a few Gila, Membres, and Mogollen Apaches, known as Southern Apaches, and at his request the families of those Indians (Chiricahuas) who had been kept on the San Carlos reservation were sent for.

Victoria was soon thereafter indicted in New Mexico for murder and horse-stealing, and he became fearful of arrest and conviction therefor and suddenly left the reservation (in July), taking with him those he had brought and also all the Southern Apaches on that reservation. (Report Secretary Interior, 1879, p. 100.)

They went west and began marauding, destroying property, and killing citizens, and so continued during the latter part of winter and early spring of 1880 within 40 miles of the Mescalero reservation, Victoria in the meantime using his influence to induce the Mescaleros to join his forces, and by April, 1880, some 200 to 250, of whom 50 or 60 were men, left their reservation and joined him. (Report Secretary of Interior, 1880, p. 251.) They continued their warfare until driven by the troops under Colonel Hatch, United States Army, across the Rio Grande river into the San Andres mountains in April, 1880, where he had a

severe fight with them, and several of his men were wounded and a number of Indians, including a son of Victoria, were killed. They finally retreated into Mexico.

Under the leadership of Victoria they again crossed, and recrossed the line to and from the United States, but were driven out twice by the forces under Colonel Grierson, United States Army, and their forces diminished until finally the few remaining were driven by General Buell some time after October 1, 1880, into Mexico, where Victoria and nearly all of his followers were killed. (Report Secretary of War, 1880, pp. 86 and 118.)

During all the period of hostilites as aforesaid Victoria had under him a *minority* of the Chiricahua tribe of Apache Indians. At his solicitation he was re-enforced from time to time during said period by a *minority* of the Indians from the Mescalero and Southern Apache tribes; besides had under him a number of unknown Indians from Mexico, making in all about 200 Indians in his band at the time of the depredation hereinafter found.

These Indians were allied together under the name of Victoria's band for the purpose of aiding Victoria and his followers in their hostile and warlike acts against the citizens and the military authorities of the United States.

The alliance thus formed, as well as the hostile acts committed by the band, were without the consent of the several tribes from which the members of the band came and to which they had previously belonged.

From the reports referred to in the foregoing findings, and also in the various reports of military officers and the Secretary of War, embodied in the report of the latter officer for 1879 and 1880, it appears that the Indians under Victoria, from whatever tribes, were recognized or referred to under the name of Victoria's band, and under that name were operated against for two years or more by the military authorities for their acts of war and hostility against the United States, until driven out of the country and destroyed as aforesaid.

On the 12th of March, 1880, the property set forth in finding II was stolen and driven away or destroyed by the Mescalero Apache Indians, who were at the time allied with Victoria's band for the purpose of hostility and war as aforesaid, and that said band so constituted was not at the time of said depredation in amity with the United States.

But the Mescalero tribe, then on their reservation near Fort Stanton, about 100 miles distant from the scene of the depredation, and to which the Mescaleros who committed the depredation had belonged before they joined Victoria's band, was in amity with the United States.

Said property was taken without any just cause or provocation on the part of the owners or their agents in charge, and has never been returned or paid for in whole or in part.

IV.

Upon the foregoing findings of fact the court finds the ultimate fact, so far as it is a question of fact, that the depredation set forth in finding III was committed by Indians belonging to a war party or hostile band, known as Victoria's band, of Apache Indians, which was at and long before that time known and recognized as a band, separate and distinct in its organization and action from the several tibes, then at peace, to which its members had formerly belonged, and that the band as thus constituted was not in amity with the United States at the date of said depredation.

V.

The claim which is the subject of this suit was presented to the defendant Indians in council on or before June 8, 1880, by S. A. Russell, agent for the Mescalero Apache Indians, under the direction of the Commissioner of Indian Affairs.

Conclusion of Law.

Upon the foregoing findings of fact the court decides as a conclusion of law that the petition be dismissed.

Opinion.

PEELLE, *J.*, delivered the opinion of the court:

The claimant, as surviving partner of the late firm of E. Montoya & Sons, seeks to recover under the act *March 3, 1891* (26 Stat. L., 851), for the loss of horses, mules, and other live stock taken
6 from them without just cause or provocation, on the 12th of March, 1880, in Socorro county, N. Mex., by Mescalero Apache Indians, then and for a long time prior thereto allied with Victoria, a Chiricahua Apache, and his followers, under the name of Victoria's band, as set forth in the findings.

Two questions are presented for our consideration: (1) What was the status of Victoria's band of Indians, *i. e.*, was it at the time of the depredation herein a band—a responsible entity—within the meaning of the act cited? And (2) if so, was it in amity with the United States?

In 1876 an effort was made to remove the Chiricahua band of Apache Indians from their homes in southeastern Arizona to the San Carlos reservation, but they resisted and a minority of them, including Victoria, became hostile and so continued until December, 1878.

In February following, Victoria, with 22 followers, came near the military post of Ojo Caliente and agreed to surrender conditionally, but in April following he, with his followers, escaped and went to the San Mateo mountains. He was pursued by the military forces, but escaped into Mexico.

In June following, Victoria, with 13 men, reported at the Mescalero reservation, near Fort Stanton, N. Mex., but, being under

indictment for murder and horse stealing, Victoria became fearful of arrest and conviction and suddenly left the reservation, taking with him those he had brought and also all the Southern Apaches on that reservation.

They went West and began marauding, destroying property and killing citizens, and so continued until the spring of 1880, Victoria in the meantime using his influence to induce the Mescaleros to join his forces; and by April, 1880, some 200 to 250, of whom 50 or 60 were men, left their reservation and joined him.

They continued their acts of hostility and warfare, engaging the United States troops in battle and in skirmishes from that time until finally driven into Mexico, where Victoria and nearly all his followers were killed.

Victoria's band was composed of a minority of the Indians from the Chiricahua, Mescalero, and other tribes of Apache Indians, and of some unknown Indians from Mexico, numbering in all, at the time of the depredation herein found, about 200 Indians, composing the band all of whom were allied together for the purpose of resisting the military authorities in placing the Chiricahuas on the San Carlos reservation, and for the purpose of aiding Victoria in his hostile and warlike acts against the citizens and the military authorities of the United States.

The claimant's contention is that the band, as thus constituted, was an unlawful mob of renegades, amenable to the civil law as murderers and robbers, and not therefore a band—a responsible entity—entitled to belligerent rights within the meaning of the act of 1891 (*supra*).

Prior to the passage of the act of 1891, the Government had entered into treaty relations with nearly all the tribes and nations of Indians in the United States and also with many of the bands composing the tribes and nations.

By such treaties the tribal relations of such Indians were thereby recognized by the political departments of the Government, but where such relations did not exist, in respect to Indians charged with committing depredations, the court will look elsewhere to ascertain their status, as the liability of the United States is limited to depredations committed by "Indians belonging to any band, tribe, or nation in amity with the United States," and are "in fact, if not in form, the primary and solvent judgment debtor. The recourse provided over against the Indian tribe, while it may be certain as to amount, is uncertain as to collection, and, before any judgment should be rendered binding the United States, it is familiar and settled law that the statute claimed to justify such judgment should be clear and not open to debate." (*Leighton v. United States*, 161 U. S., 291, 297.)

In the *Tully case* (32 C. Cls. R., p. 1) we had occasion to consider somewhat the status of the Apache Indians in respect to their relation to the United States; and, as there stated, a treaty was negotiated with them as a nation July 1, 1852 (10 Stat. L., 979).

Later (1853) a portion of them, not including the Chiricahuas, were confederated with the Kiowa and Comanche Indians by treaty

(10 Stat. L., 1013), but in 1865 they were transferred to the Cheyennes and Arapahoes (14 Stat. L., 713).

In 1867 they were again confederated with the Kiowas and Comanches. (15 Stat. L., 589.)

But the Apaches thus confederated lived remote from the Apaches of New Mexico and Arizona and had no connection therewith at the time of the hostile acts by Victoria and his followers. So that the only treaty relation Victoria and his followers sustained to the United States was by the treaty of July 1, 1852 (*supra*) as a part of the Apache nation.

The court will therefore have to look elsewhere to ascertain the relation of Victoria's band to the United States, and in this connection the court in the *Tully case* (*supra*) said:

7 The policy of the United States in dealing with the Indians has been, as we understand, to accept the subdivisions of the Indians into such tribes or bands as the Indians themselves adopted and to treat with them accordingly.

So that if such subdivisions, whether into tribes or bands, have not been recognized by treaty, but have been by the officers of the Government whose duty it was to report in respect thereto, then the court will accept that as sufficient recognition of the tribe or band upon which to predicate a judgment.

Or if there be no such recognition by the Government, then the court will accept the subdivisions into such tribes or bands as made by the Indians themselves, whether such tribes and bands be named by reason of their geographical location or otherwise.

The confederation of Indians from the various tribes or bands under the leadership of Victoria, as set forth in the findings, was not for the purpose of robbery and theft, but was for the purpose of aiding Victoria and his Chiricahua followers in resisting the military authorities in removing them to the San Carlos reservation; and to effectuate their purpose they unitedly committed acts of hostility and war against the United States—not a single act, but continuous acts of hostility, *i. e.*, battles and skirmishes with the troops of the United States covering a period of more than two years and until their numbers were depleted in battle and the few remaining were finally driven into Mexico, where Victoria and nearly all his followers were killed.

During these acts of hostility as aforesaid Victoria and his followers were frequently recognized or referred to in the reports of the officers of the United States, both civil and military, as "Victoria's band" of Apache Indians as set forth in the findings; and as such band was operated against by the troops of the United States from "numerous camps in Mexico," as reported by Lieutenant General Sheridan, October 22, 1880. (Report Secretary of War, 1880, p. 52.)

Was the alliance of Indians thus constituted, coupled with their continuous hostile acts as aforesaid, sufficient to constitute them a band within the meaning of the act of 1891 (*supra*)?

By the first section of the act the court is given "jurisdiction and authority to inquire into and finally adjudicate" * * * "all claims for property of citizens of the United States taken or de-

stroyed by Indians belonging to any band, tribe, or nation in amity with the United States, without just cause or provocation on the part of the owner or agent in charge and not returned or paid for."

The political status of the Indians in the United States was first considered by the court in the well-known case of *Cherokee Nation v. Georgia* (5 Pet., 1) where the court in considering the question as to whether an injunction would lie to restrain the State of Georgia from the execution of certain laws of that State, which it was alleged, among other things, would "go directly to annihilate the Cherokees as a political society and to seize, for the use of Georgia, the lands of the nation," denominated the Indian nations as "domestic dependent nations," resembling, in their relations to the United States, "a ward to his guardian," and not being a foreign nation within the meaning of section 2, article 3, of the Constitution, could not maintain a suit in the courts of the United States.

In the case of *Worcester v. The State of Georgia* (6 Pet., 515, 548) the court, in reviewing the policy of Great Britain in her relation to the Indians inhabiting this country, said: "She considered them as nations capable of maintaining the relations of peace and war; of governing themselves, under her protection; and she made treaties with them, the obligation of which she acknowledged." This, the court says, "was the settled state of things when the war of our Revolution commenced."

The first treaty, which the court says was made with the Delawares in September, 1778 (7 Stat. L., 13), was "in its language and in its provisions" formed "on the model of treaties between the crowned heads of Europe."

The court further says (p. 559):

The Indian nations had always been considered as distinct, independent political communities, retaining their original natural rights as the undisputed possessors of the soil from time immemorial, with the single exception of that imposed by irresistible power, which excluded them from intercourse with any other European potentate than the first discoverer of the coast of the particular region claimed, and this was a restriction which those European potentates imposed on themselves as well as on the Indians. The very term "nation," so generally applied to them, means "a people distinct from others." The Constitution, by declaring treaties already made, as well as those to be made, to be the supreme law of the land, has adopted and sanctioned the previous treaties with the Indian nations, and consequently admits their rank among those powers who are capable of making treaties. The words "treaty" and "nation" are words of our own language, selected in our diplomatic and legislative proceedings by ourselves, having each a definite and well-understood meaning. We have applied them to Indians as we have applied them to the other nations of the earth. They are applied to all in the same sense.

Later, in the case of *Holden v. Joy* (17 Wall., 211, 242), the court said:

Indian tribes are States in a certain sense, though not foreign

States, or States of the United States, within the meaning of
8 the second section of the third article of the Constitution which extends the judicial power to controversies between two or more States, between a State and citizens of another State, between citizens of different States, and between a State or the citizens thereof and foreign States, citizens, or subjects. They are not States within the meaning of any one of those clauses of the Constitution, and yet, in a certain domestic sense, and for certain municipal purposes, they are States, and have been uniformly so treated since the settlement of our country and throughout its history, and numerous treaties made with them recognize them as a people capable of maintaining the relations of peace and war, of being responsible in their political character for any violation of their engagements, or for any aggression committed on the citizens of the United States by any individual of their community. Laws have been enacted by Congress in the spirit of those treaties, and the acts of our Government, both in the executive and legislative departments, plainly recognize such tribes or nations as States, and the courts of the United States are bound by those acts.

The theory of those decisions was that, as the policy of Great Britain in recognizing the Indians as "nations capable of maintaining the relation of peace and war" had been recognized by the United States in their treaties with the Indians and sanctioned by the Constitution, by declaring "all treaties made or which shall be made, under the authority of the United States," as "the supreme law of the land," the status of the Indians "as distinct, independent political communities" was to continue.

It was because of those decisions that the court in the *Leighton case* (29 C. Cls. R., 288,) considered the Indian tribes as "independent political communities," entitled, in the contest of arms, to belligerent rights; and such was the holding of the court in the *Love case* (29 C. Cls. R., 332).

From an examination of the treaties found in 7 Stat. L., 13 *et seq.*, it will be seen that the first treaties made by the United States with the various Indians, beginning in 1778, were with them in their character as nations, as with the *Delaware nation, Six Nations, Choctaw nation, Creek nation, Sioux nation, Apache nation*, etc.

Subsequently other like treaties were made with the same and other Indians, recognizing them in their character as nations, while many of the nations were united or confederated together and treaties made with them accordingly.

Later treaties were made with some of these same nations as tribes, followed by many treaties with the bands composing the nation or tribe, as with the various bands composing the Sioux nation, and the bands of the Chippewas, Yakamas, Senecas, Shoshones, etc. (7 Stat. L., 257 *et seq.*, and Revision of Indian Treaties, p. 227 *et seq.*), thus showing that the United States recognized the Indians for the purpose of a treaty in whatever character they chose, whether as nations, tribes, or bands.

The main purpose in treating with the Indians was to secure and maintain peace with them, and thereby open up the country to ad-

vancing civilization; and whenever that could be attained, treaties appear to have been made with them without reference to their particular form of government or tribal organization.

The chief executive or responsible head of the organization, whatever its character, was the one whose signature was sought in making treaties.

This may furnish the reason why the Congress in the act of 1891 make no distinction between tribes, bands, and nations in respect to the amity of the political entity essential to give the court jurisdiction.

A *tribe*, says Webster's Dictionary, is—

A family, race, or series of generations, descending from the same progenitor, and kept distinct. * * *

A nation of savages or uncivilized people; a body of rude people united under one leader or government; as, the tribes of the Six Nations; the Seneca tribe of America.

A division, class, or distinct portion of people or persons, from whatever cause that distinction may have originated; as, the city of Athens was divided into ten tribes.

The Century Dictionary says *tribe* means—

Specifically, a division of a barbarous race of people, usually distinguished in some way from their congeners, united into a community under a recognized head or chief, ruling either independently or subordinately. In general the tribe, as it still exists among the American Indians and many African and Asiatic races, is the earliest form of political organizations, nations being ultimately constituted by their gradual amalgamation and loss of identity in the progress of civilization.

A *band*, as defined by Webster's Dictionary, is—

A company of persons united in any common design, especially a body of armed men.

To unite in a troop, company, or confederacy.

To confederate for some common purpose; to unite; to conspire together.

The Century Dictionary gives the same, or substantially the same, meaning. A band, therefore, may be composed of members from different tribes or families, although ordinarily a separate organization or entity within the tribe.

In speaking of the characteristics and customs of the Indians at the time the English took possession of the country, Bancroft, in his History of the United States (vol. 1, p. 80), says: "But the great peculiarity of the Indians consisted in the want of political connection. A single town often constituted a government; a collection of ten or twenty wigwams might be an independent State. The greatest chief in the country could not muster more than seven or eight hundred fighting men. The dialect of each government seemed a language by itself."

9 "Their government," he further says (vol. 2, p. 425), "rested on opinion and usage, and the motives to the usage were never embodied in language; they gained utterance only in the fact and power only from opinion. No ancient legislator believed that human

society could be maintained with so little artifice. Unconscious of political principles, they remained under the influence of instincts. Their forms of government grew out of their passions and their wants, and were therefore everywhere nearly the same. Without a code of laws, without a distinct recognition of succession in the magistracy by inheritance or election, government was conducted harmoniously by the influence of native genius, virtue, and experience. * * * The Indian chief has no crown or scepter or guards; no outward symbols of supremacy or means of giving validity to his decrees. The bounds of his authority float with the current opinion in the tribe; he is not so much obeyed as followed with the alacrity of free volition, and therefore the extent of his power depends on his personal character. There have been chiefs whose commanding genius could so overawe and sway the common mind as to gain, for a season, an almost absolute rule, while others had little authority, and, if they used menaces, were abandoned."

In the light of what has been said, was not Victoria entitled to rank as the chief or head of an organization known as a band?

It was not an assembly or organization of people having in view plunder and pillage for a day or a week and then of separating and returning to their several homes, in which case their respective tribes, if in amity with the United States, would be liable, but it was a band separate and distinct in its organization, and in its action independent of the several tribes or bands to which its members theretofore belonged; and having confederated themselves together under the leadership of Victoria as a band for the common purpose of hostilities and war, without the consent of their respective tribes, and so continued their hostile acts for more than two years, they thereby transferred their allegiance to the band and recognized Victoria as the executive head. This constituted the organization a band—a separate and distinct entity—within the meaning of the act of 1891, and as such was recognized by the officers of the United States and operated against by the military authorities in the usual mode of warfare against the Indians.

That the band as thus constituted was actually hostile to the United States from its inception until its destruction there can be no doubt; hence the band as a band was not in amity with the United States at the time of the depredation, March 12, 1880, and was not for a long time prior or subsequent thereto.

This being true, it matters not that the Mescalero tribe, to which the depredating Indians formerly belonged, was at the time in amity with the United States, as by thus allying themselves with the band under the leadership of Victoria for the purpose of war without the consent of their tribe—then at peace—they thereby transferred their allegiance to the newly organized band; and their hostile acts, therefore, are to be determined by the status of the band with which they were thus allied.

This would unquestionably be the rule if Victoria had been the chief or head man of a majority of the Chiricahuas, of which he was a member.

Where a few individual members of a tribe, at peace, without its

consent confederate with a tribe at war and engage with it in acts of hostility against the United States, and while so engaged take or destroy the property of a citizen, such individuals will, for the purpose of determining the character of such act, be considered as members of the hostile tribe.

For the reasons stated the court is without jurisdiction, and the petition is dismissed.

Howry, J., was not present when this case was tried, and took no part in the decision.

10 III.—*Judgment of the Court.*

EUTIMIO MONTOYA, Surviving Partner, *v.* THE UNITED STATES and THE MESCALERO Apache Indians.	No. 1588. Indian Depredation.

At a Court of Claims held in the city of Washington on the 12th day of April, 1897, judgment was ordered to be entered up as follows:

The court, upon due consideration of the premises, find in favor of the defendants, and do order, adjudge, and decree that the claimant's petition be dismissed.

BY THE COURT.

11 IV.—*Claimant's Application for and Allowance of Appeal.*

Now comes the claimant, Eutimio Montoya, survivor, &c., as above, by his attorneys, Charles & William B. King, and appeals from the judgment of this court entered on the 12th day of April, 1897, dismissing the petition for want of jurisdiction, and prays an allowance of such appeal.

CHARLES & WM. B. KING,
Attorneys for Claimant.

Filed July 6, 1897.

Ordered that the aforesaid application of the claimant for an appeal, filed July 6, 1897, be allowed as prayed for.

BY THE COURT.

February 20, 1899.

12 In the Court of Claims.

EUTIMIO MONTOYA, Surviving Partner of the Firm of E. Montoya & Sons, *vs.* THE UNITED STATES and THE MESCALERO Apache Indians.	No. 1588. Ind. Dep.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court

and the conclusion of law thereon, of the judgment of the court, of the application for and allowance of an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this 3d day of March, A. D. 1899.

[Seal Court of Claims.]

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

Endorsed on cover: File No., 17,387. Court of Claims. Term No., 278. Eutimio Montoya, surviving partner of the firm of E. Montoya & Sons, appellant, *vs.* The United States and The Mescalero Apache Indians. Filed April 29, 1899.